SUBJECT INDEX

	Page
Opinions Below	1
Questions Presented	2
Jurisdiction	2
Statutes Involved	2
Statement of the Case	2
Reasons for Granting This Writ	5
1. The Utilization of a Press Pass System to Interfere With the News-Gathering Function of the Radical Press Presents Important Undecided Constitutional and Social Issues	5
2. The Issuance of Press Passes to All Other Publications Except Petitioner, Constitutes an Abuse of Freedom of the Press and a Denial of Equal Protection of the Laws	7

TABLE OF AUTHORITIES CITED

Cases	Page
Barenblatt v. United States, 360 U.S. 109	9
Grosjean v. American Press Co., (1936) 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660	6
Lamont v. Post Master General, 381 U.S. 301 (1965)	7
NAACP v. Button, 371 U.S. 415 (1963)	8
New York Times Co. v. Sullivan, 376 U.S. 254 (1964)	9
Zenaldi v. Yaager, (1966) 384 U.S. 305, 16 L. Ed. 2d 577, 86 S. Ct. 1497	8
Richmond Chronicle v. Groth, June 18, 1970, Case No. 332-70-R	6
Shapiro v. Thompson, (1969) 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322	8
Sherbert v. Verner, (1963) 374 U.S. 398, 10 L. Ed. 2d 965, 83 S. Ct. 1790	8
Straner v. Doorley, 309 F. Supp. 16 (1970)	6
Tribune Review Publishing Co. v. Thoman, (1958) 254 F. 2d 883	7
United Press Association v. Valente, 308 N.Y. 71, 123 N.E. 2d 777 (1954)	7
Wirta v. Alameda Contra Costa County Transit District, 68 Cal. 2d 31 (1969)	9

Statutes	
United States Code, Title 28, Sec. 1257(3)	2
United States Constitution, First Amendment	2, 6, 7, 9
United States Constitution, Fourteenth Amendment	2, 8

Textbook	
82 Harvard Law Review (1969), pp. 1064, 1120-1131	8

IN THE

Supreme Court of the United States

October Term, 1970

No. .....

THE LOS ANGELES FREE PRESS, INC., a California corporation,

Petitioner,

vs.

THE CITY OF LOS ANGELES, a municipal corporation; THOMAS REDDIN, Chief of the Police of the City of Los Angeles; THE COUNTY OF LOS ANGELES; PETER PITCHESS, Sheriff of the Los Angeles County,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

To the Honorable Warren Burger, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

The Los Angeles Free Press, Inc., the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California entered in the above entitled case on September 30, 1970.

Opinions Below.

Petitioner's petition for a writ of mandamus seeking press credentials for its reporters was denied by the Superior Court of the State of California for the Coun-

ty of Los Angeles on January 3, 1969. The decision was affirmed by the Court of Appeal of the State of California, Second Appellate District, on July 8, 1970 by an opinion printed at 9 Cal. App. 3d 488; The Court of Appeal denied a timely petition for rehearing on July 28, 1970.

Questions Presented.

1. Whether petitioner's newspaper has First and Fourteenth Amendment rights of access to information, which rights have been abridged by the denial of press credentials to its employees.

2. Whether a state agency may bestow press passes for access to news events only upon those media said agency in its discretion deems worthy of said passes.

Jurisdiction.

Petitioner's petition for hearing before the Supreme Court of the State of California was denied on September 30, 1970.

The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3).

Statutes Involved.

United States Constitution, First Amendment.

United States Constitution, Fourteenth Amendment.

Statement of the Case.

Petitioner is an "underground" newspaper in Los Angeles, California, with a weekly readership at the time of trial of approximately 25,000 and a paid circulation of in excess of 85,000. The City of Los Angeles, and the County of Los Angeles, through the police

and sheriff respectively, have a system of issuing press passes to reporters of the communications media. The passes are recognized by law enforcement agencies to allow reporters access through police lines to many newsworthy events.

Petitioner has been attempting unsuccessfully for over three years to obtain passes for its reporters. No other publication, save one with an infinitesimal circulation, has ever been denied press credentials by the city or county of Los Angeles. While respondents do not directly admit that they deny petitioner's employees press passes because they disapprove of petitioner's newspaper, they have admitted that petitioner's content and advertising have influenced that decision. On direct examination by County Counsel as to the reasons for the denial of the press pass, Sgt. Campbell of the Sheriff's Office testified: "One item that we raised an eyebrow about was the fact that some of their writings in the Free Press were pro-LSD, and some of their advertising was pro-marijuana, pro-abortion, and various other things that are a matter of record in their printing, and that there are at the present time laws against such things as that they were advocating.

"There also was advertising pertaining to sex advertising, and things of this nature, which we felt was not particularly in the best interest of the community or of the children in the community, and that the Sheriff's Department was not about to be a party to backing this type of a newspaper by issuing them a press credential." [Rep. Tr. 132-133].

Likewise, Sgt. Cooke of the Los Angeles Police Department testified under questioning by the court as follows:

> "Well quite obviously, your Honor, if someone brings in a newspaper and it doesn't come under what our connotation has been as far as hard news is by the content. If . . . We have had underground newspapers in the past that have come in and requested credentials, and the type of thing that they are reporting, the type of stories they are writing, what I would personally determine as being either pornographic or vile in my personal opinion. This naturally has an effect. However, so far, these kind of papers have not qualified initially but, naturally I am still concerned with their content." [Rep. Tr. 307].

The respondents have, however, manufactured various grounds for not issuing the credentials, which grounds shifted throughout these proceedings. These grounds included lack of enough police beat news; lack of a "need to know"; non-daily publication; sociological rather than factual reporting; and finally (incredibly) that the Los Angeles County Sheriff had absolute discretion.

The Superior Court of Los Angeles County decided essentially that since this was a mandamus action, petitioner must show a governmental abuse of discretion and that the reasons given by respondents for denial at trial, were adequate to show a reasonable exercise of that discretion. Petitioner argues that a system that allows non-journalist policemen discretion to exclude a newspaper from any news event solely on those individuals' subjective view of the publication, is an horrendous denial of freedom of the press and a denial of equal protection.

Reasons for Granting This Writ.

I. The Utilization of a Press Pass System to Interfere With the News-Gathering Function of the Bona Fide Press Presents Important Unsolved Constitutional and Social Issues.

Why is this case important—why should the Supreme Court examine what seems to be a parochial problem in Southern California? After all, this is not the *New York Times*, the *Washington Post* or the *Wall Street Journal;* it is *The Los Angeles Free Press*. That is exactly why it is important.

The Los Angeles Free Press is an "underground" newspaper—a new breed of publication with a new political point of view; a publication aimed at the young and the radical.

All of the weight of the law enforcement agencies of Los Angeles County have been aimed at quieting this voice. If this conduct of the police and the sheriff is not stopped and stopped now, more fuel will be fed to the flames of national disillusionment by those who are already alienated. If those who speak out against the established order are denied the full use of legitimate channels of communication, they will be forced to seek illegitimate ones.

The respondents' conduct constitutes an elemental denial of freedom of the press by interfering with that freedom at its outset—before the news gathering begins. Apparently, respondents are reacting to Napoleon's contention that, "Three hostile newspapers are more to be feared than a thousand bayonets."

Respondents and the California courts dodge this denial of freedom of the press by arguing that no newspaper has a right superior to the public at large either to cross police lines or to enter press conferences. But

where a portion of that public is admitted, petitioner may not be denied access simply because of its content.

Abridgments of freedom of press may take many forms, and respondents should not be rewarded for their subtlety ". . . in the domain of indispensable First Amendment liberties, it is essential not to limit the protection of the right to any particular way of abridging it." *Grosjean v. American Press Co.*, (1936) 297 U.S. 233, 249; 56 S. Ct. 444, 449; 80 L. Ed. 660.

The federal courts have heeded this rule. There are no court of appeal cases with similar facts and there probably never will be. The District Court in Rhode Island knew that the government cannot issue press passes based upon a paper's content and with unlimited discretion. The newspaper therein had failed to qualify for technical reasons, but the court went out of its way to say, "Nevertheless, because such regulation imposes a burden not only upon the vital newsgathering of the free press, but also upon the right general public to travel on the public way, and must contain clear and narrow guidelines". *Strasser v. Doorley*, 309 F. Supp. 16 (1970).

In the U.S. District Court for the Eastern District of Virginia, the City of Richmond hardly got past the courthouse steps when the court on an application for injunction issued its order compelling the issuance of press passes forthwith to the reporters of the "underground" *Richmond Chronicle*. There was no written opinion. *Richmond Chronicle v. Groth*, June 18, 1970, Case No. 332-70-R.

This issue is an important one to the newspaper, its quarter million readership, and the tradition of a

free and radical press. It is even more important that this newest form of interference with a free press be stopped.

2. The Issuance of Press Passes to All Other Publications Except Petitioner, Constitutes an Abuse of Freedom of the Press and a Denial of Equal Protection of the Laws.

Respondents argue that petitioner has no constitutional rights which have been denied in these proceedings. They cite a line of cases standing for the proposition that a news gatherer has no constitutionally protected right of access to information superior to that of the public generally. See, for example, *Tribune Review Publishing Co. v. Thomas*, (1958) 254 F. 2d 883; *United Press Association v. Valente*, 308 N.Y. 71, 123 N.E. 2d 777, 778 (1954).

In the first place, the right to receive information has apparently been decided by this court. In *Lamont v. Post Master General*, 381 U.S. 301 (1965) this court held that the First Amendment does protect the right to receive information. In his concurring opinion, Justice Brennen states directly: "The First Amendment necessary protects the right to receive information." (*Id.* at p. 308) The impact of the *Lamont* decision on the line of Federal and State cases following the *Tribune Review* and *Valente* cases has yet to be decided by this court.

In the second place, the respondents' argument fails to comprehend that petitioner does not necessarily rely on the right to be treated superior to the public at large. A special class of petitioner's equals has *already* been created by respondents in the creation of the press pass system. Whether petitioner can be excluded from that class of news publishers on grounds only remotely

related to the necessities of that system is a question of importance yet to be decided.

As stated, no other applicant has ever been denied press passes for its reporters by the city of Los Angeles except one very small newspaper. The largesse of the government of Los Angeles County has been distributed to all except petitioner. It is basic that the guarantee of equal protection embodied in the Fourteenth Amendment of the United States Constitution prohibits the state from arbitrarily discriminating among persons subject to its jurisdiction. Any classification must bear a rational relationship to a legitimate public purpose. *Rinaldi v. Yeager*, (1966) 384 U.S. 305, 308, 309; 16 L. Ed. 2d 577, 579-580; 86 S. Ct. 1497.

Moreover, "in cases involving suspect classifications or touching on fundamental interests, the state bears the burden of establishing not only that it has a compelling interest which justifies the law, but the distinctions drawn by the law are necessary to further its purpose". . . . *Shapiro v. Thompson*, (1969) 394 U.S. 618, 638; 22 L. Ed. 2d, 600, 617; 89 S. Ct. 1322; *Sherbert v. Verner*, (1963) 374 U.S. 398, 406; 10 L. Ed. 2d 965, 971; 83 S. Ct. 1790. See also, Developments in the Law—Equal Protection (1969) 82 Harv. L. Rev. 1064, 1120-1131.

As stated in *NAACP v. Button*, 371 U.S. 415, 438 (1963): "Broad prophylactic rules in the area of free expression are suspect [citations]. Precision of regulation must be the touchstone in an area so closely touching our most precious freedom. . . ."

The law clearly requires a balancing of competing interest. However these interests must be balanced in *each case*. See *Barenblatt v. United States*, 360 U.S.

109, 126. Instead of determining whether, at any particular news event a limited number of reporters should be allowed, respondents have prevented petitioner and its reporters from ever attending a credentialed news event.

Respondents argue that their regulations are reasonable. However, even the California courts have stated that "The general reasonableness test applicable to the due process and equal protection clauses is not to be utilized when First Amendment rights are at stake." *Wirta v. Alameda Contra Costa County Transit District*, 68 Cal. 2d 51, 60 (1969). It is now for this court to determine whether the usual rules pertaining to the regulation of First Amendment rights, as cited in this petition, apply to a state-imposed press-pass system.

The First Amendment rests on the premise "That right conclusions are more than likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Respondents, by restricting access to news, have sought to silence one of these tongues. To the extent that they are successful, they have driven one more nail into the coffin of freedom of the press.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

FRED OKRAND,
RICHARD E. POSELL,
MITCHELL S. SHAPIRO,
Attorneys for Petitioner.